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Statute involved:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):	
Section 8(b)(4)(D)	2, 8, 9
Section 10(k)	2, 8, 9

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1170

LOCAL 1291, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND POCAHONTAS STEAMSHIP COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 15–19) is reported at 368 F. 2d 107. The findings of fact, conclusions of law and order of the Board (J.A. 3a–19a) [1] in the unfair labor practice proceeding are reported at 154 N.L.R.B. 1785. The Board's earlier decisions, dealing with the underlying jurisdictional disputes (19a–38a), are reported at 152 N.L.R.B. 676 and 152 N.L.R.B. 735.

[1] "J.A." refers to the Joint Appendix filed in the court below.

JURISDICTION

The decision of the court below was rendered on October 27, 1966 (Pet. 15); a petition for rehearing was denied on November 28, 1966 (Pet. 20); and the court's decree was entered on December 21, 1966 (Pet. 21–22). The petition for a writ of certiorari was filed on March 20, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. 13–14 of the petition.

QUESTION PRESENTED

Section 8(b)(4)(D) of the National Labor Relations Act makes it an unfair labor practice for a union to exert strike pressure against an employer in order to compel him to assign particular work to one group of employees rather than to another group. Section 10(k) provides that, "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of" Section 8(b)(4)(D), "the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen." The question presented is whether, in the circumstances of this case, the Board properly concluded that two labor organizations were claiming the work in issue so that a "dispute" existed within the meaning of Section 10(k).

STATEMENT

A. THE BOARD'S FINDINGS OF FAC

1. THE DISPUTE OVER HATCH AND BEAM WORK ON POCAHONTAS SHIPS

Pocahontas Steamship Company ("Pocahontas") is engaged in the shipment of coal from ports in Pennsylvania to ports in Massachusetts (J.A. 5a, 7a; 64a; 81a). In preparation for loading the coal and moving it out to sea, it is necessary to open and close the ships' hatches, an operation referred to as "hatch and beam work." The hatches are raised and lowered by the turning of electric switches, an operation that takes one man about 30 minutes. (J.A. 7a–8a, 21a; 56a, 67a, 100a–101a.) As a member of the Collier Owners' Association, Pocahontas has a collective bargaining agreement with the National Maritime Union ("NMU"), covering the unlicensed deck department employees on each of its ships (J.A. 8a, 23a; 56a–57a, 82a–83a, 190a). The agreement provides a monthly salary and premium pay for the employees, in return for which they are required to perform a variety of duties including the opening and closing of the ships' hatches (J.A. 8a, 23a; 190a–193a).[2] With

[2] Article IV of the contract provides, in pertinent part (J.A. 193a):

"Section 1. *Duties.* Members of the Deck Department shall perform only the necessary and customary duties of their rating as directed by their officers. * * *

"Section 2. *Work on Hatches.* To insure safety, a sufficient number of men shall be employed in the opening and closing of hatches.

few exceptions, hatch and beam work has always been assigned by Pocahontas to its unlicensed deck department employees, and it has always been performed by them (J.A. 27a; 56a–57a, 62a, 101a, 102a, 116a).

The Reading Company ("Reading") owns and operates Pier 18, Port Richmond, Philadelphia, and its employees load coal onto ships which dock there (J.A. 7a, 21a; 42a, 90a). Reading contracts out longshore work, such as shifting vessels to facilitate loading, to E. W. Coslett and Sons ("Coslett"), whose employees are represented by various locals of the International Longshoremen's Association ("ILA") (J.A. 21a; 42a,

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Article III provides, in pertinent part (J.A. 191a–192a):

Section 5. *Work on Hatch Gear.* Overtime shall be paid to the watch on deck between 5:00 P.M. and 8:00 A.M. weekdays if required to rig or unrig hatch gear or raise or lower hatches in preparation for loading or discharging cargo or after cargo has been loaded or discharged. * * *

"Section 6. *Shifting Ship.* (a) After the vessel has been originally berthed for the purpose of loading or discharging cargo, subsequently inland shifts of less than five (5) hours shall be considered as shifting ship and the unlicensed members of the Deck Department participating in this operation between the hours of 5:00 P.M. and 8:00 A.M. on weekdays, and Saturdays, Sundays, and holidays shall be paid for this work at regular overtime rate. * * *

"(e) The following duties shall apply when shifting ship between the hours of 5:00 P.M. and 8:00 A.M. weekdays, and on Saturdays, Sundays, and holidays:

"1. Taking in gangway
"2. Normal duties of letting go lines.
"3. Handling of tugs or barge lines
"4. Steering vessels
"5. Lookouts if required
"6. Normal duties in handling of lines tying up
"7. Putting out gangway
"8. Raising or lowering hatches (dogging and undogging not included)."

46a, 48a–50a). Both Reading and Coslett are members of the Philadelphia Marine Trade Association ("PMTA") which has a contract with a number of ILA locals, including petitioner, Local 1291. This contract assigns hatch and beam work to the ILA, and ILA members customarily perform such work in Philadelphia ports (J.A. 8a, 23a, 27a; 82a, 117a–119a). Pocahontas is neither a member of PMTA nor a party to the contract with the ILA (J.A. 8a, 23a).

On April 16, 1964,[3] the *SS Pocahontas Fuel* docked at Pier 18 and Reading started loading coal into its hatches, which, as was customary, had been opened by the Pocahontas seamen (J.A. 8a, 22a; 42a–44a, 90a, 92a). About one hour later, an officer of Local 1291 approached Coslett and asked why there were no ILA hatch and beam men on the *Pocahontas Fuel*. Coslett replied that this was not its responsibility but that it would check into the matter. (J.A. 46a–47a.)[4] Representatives of Local 1291 then went to Reading's office on Pier 18 and there told the ship's captain and Reading officials that work on the *Pocahontas Fuel* would not continue unless hatch and beam men were hired (J.A. 43a–44a, 91a–92a). Picketing then commenced at the entrance to the pier, with signs reading that Pocahontas was unfair to Local 1291; and, when the time came for Coslett's employees to move the ship, they refused to cross the picket line (J.A. 8a, 22a; 44a, 48a, 92a). Work was not resumed until the next day, when an ILA hatch and beam crew was

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[3] All subsequent dates are in 1964.

[4] Hatch and beam men are customarily hired by the ship's agent (J.A. 10a; 47a).

hired by Coslett at a cost to Reading of about $900.00 (J.A. 8a, 28a; 44a–45a, 48a–49a, 92a, 98a). Similar incidents occurred on May 16 and June 17, when the *SS Oakey L. Alexander,* another Pocahontas ship, docked at Pier 18 with its hatches already having been opened by its own NMU crew (J.A. 8a, 22a; 54a, 56a, 60a, 102a).

On July 30, the NMU advised the Board's Regional Office by letter that it did "not make claim to the opening and closing of hatches involved in the [Pocahontas] case" (J.A. 22a; 120a). However, the NMU did not communicate any such disclaimer to Pocahontas, and Pocahontas seamen continued to do the hatch and beam work without filing any grievances and to receive their usual pay (J.A. 64a, 74a, 84a–85a, 87a, 102a–103a). On August 22, the *SS Oakey L. Alexander* again docked at Pier 18, with hatches already opened by its own NMU crew; Local 1291 again picketed to compel the assignment of Pocahontas hatch and beam work to its members; and an ILA gang was again hired in order to prevent a cessation of loading (J.A. 8a, 22a; 49a–51a, 54a–56a, 60a–62a, 64a, 75a, 77a, 98a–99a, 102a).

2. THE DISPUTE OVER HATCH AND BEAM WORK ON THE SS MARINE ELECTRIC

Marine Transport Lines ("Marine") owns and operates the *SS Marine Electric,* which carries coal, usually from ports in Virginia to ports in New England (J.A. 31a, 141a). The *Marine Electric*'s hatches are opened and closed in about ten minutes by an electric-hydraulic power system, and Marine has always assigned the work involved to two super-

vising deck officers and four of its own unlicensed deck department seamen (J.A. 32a, 36a; 148a, 151a–153a, 178a, 179a, 188a). The latter are represented by the NMU and work under a Marine-NMU contract with provisions identical to those in the Pocahontas-NMU agreement (J.A. 10a, 35a; 151a, 179a, 190a–193a).

Northern Contracting Company ("Northern") operates Pier 124, South Philadelphia (J.A. 122a-123a). Northern's employees load coal from railroad cars onto ships which dock at Pier 124, and are represented by Local 1628, ILA (J.A. 31a, 35a; 122a-123a, 158a). Neither Marine nor Northern is a party to the PMTA contract or any other agreement assigning hatch and beam work to the ILA, although stevedoring firms which do work at their request are so bound (J.A. 35a, 123a, 157–158a).

The *Marine Electric* first docked at Pier 124 on November 19, 1964. In keeping with past practice, its hatches were opened by its NMU crew members (J.A. 10a, 32a; 142a, 152a). After Northern's employees began loading coal into the ship, two representatives of Local 1291 told Northern officials that the ship would be picketed unless a Local 1291 hatch and beam gang was hired (J.A. 10a, 32a; 123a-126a, 133a-135a, 164a-166a). Consequently, Northern employed a Local 1291 gang (J.A. 10a, 32a; 125a-126a, 166a). However, Marine's NMU seamen continued to operate the hatches without filing any grievances and received their usual contract pay; the Local 1291 employees performed no services (J.A. 10a, 32a; 152a-153a).

B. THE DECISIONS OF THE BOARD AND OF THE COURT OF APPEALS

On August 24, 1964, Pocahontas filed an unfair labor practice charge with the Board alleging that Local 1291 had violated Section 8(b)(4)(D) of the Act, and Northern later filed a similar charge (J.A. 19a–20a, 30a). Finding reasonable cause to believe that, in both cases, Local 1291 had engaged in conduct proscribed by the statute, the Board held hearings pursuant to Section 10(k) of the Act to determine the underlying disputes.[5] Considering the skills and training of the employees involved, the collective-bargaining contracts, the employer's assignments and past practice, and the factors of efficiency and economy, the Board determined that the unlicensed seamen represented by NMU on Pocahontas ships, rather than the ILA longshoremen, were entitled to perform the hatch and beam work on Pocahontas ships docking at Pier 18, Port Richmond, Philadelphia (J.A. 26a-29a). The Board similarly determined that Marine's unlicensed NMU seamen were entitled to open and close the hatches of the *SS Marine Electric* when docking at Pier 124, South Philadelphia (J.A. 34a-38a). In both cases, the Board rejected Local 1291's contention that, in view of the NMU's July 30 disclaimer of interest in the hatch and beam work, there was no dispute within the meaning of Section 10(k) (J.A. 23a-26a, 34a).

[5] In both cases, the United States District Court for the Eastern District of Pennsylvania, on petitions of the Regional Director under Section 10(l) of the Act, issued temporary injunctions against Local 1291. *Samoff* v. *Local 1291, ILA*, Civil Action Nos. 36626 and 37184.

When Local 1291 refused to accept the Board's determinations, the General Counsel issued a consolidated complaint, based on the charges previously filed, alleging that it had engaged in conduct forbidden by Section 8(b)(4)(D) of the Act (J.A. 3a–4a, 7a). The Board sustained the complaint, finding that Local 1291 had struck or encouraged employees of Coslett, Pocahontas, Northern, and Marine to strike, and had threatened Pocahontas, Northern, and Marine, to force them to assign the disputed work to members of Local 1291 rather than to NMU seamen employed on Pocahontas and Marine ships (J.A. 9a, 11a, 12a). The Board ordered Local 1291 to cease and desist from the unfair labor practices found and to post appropriate notices (J.A. 13a–15a).

The court of appeals sustained the Board's findings and enforced its order in full (Pet. 15–19).

ARGUMENT

As this Court has held, Section 10(k) of the Act empowers the Board to hear and determine jurisdictional disputes of the kind referred to in Section 8(b)(4)(D), *i.e.*, a "dispute between two or more groups of employees over which is entitled to do certain work for an employer." *National Labor Relations Board* v. *Radio and Television Broadcast Engineers Union*, 364 U.S. 573, 579. The sole question raised by petitioner is whether its strike pressure to obtain the hatch and beam work on Pocahontas and Marine

ships docking in Philadelphia[6] arose out of such a jurisdictional dispute. Petitioner contends that there was no such dispute, relying on NMU's purported disclaimer of this work to show that there were no conflicting claims to the work (Pet. 5–12). The holding of the court of appeals that NMU's disclaimer did not extinguish the jurisdictional dispute (Pet. 18–19) turns on its special facts, and, in any event, is clearly correct. There is no occasion for further review.

The evidence summarized in the Statement, *supra*, pp. 3–4, 6–7, shows that, under the collective agreement between NMU and the shipowners, the NMU seamen employed on Pocahontas and Marine ships agreed to perform certain tasks, including hatch and beam work, in return for a specified monthly salary and premium pay, and that those seamen in fact customarily performed such hatch and beam work.[7] When Local 1291

[6] Contrary to petitioner's suggestion (Pet. 3–4), the Board's and lower court's findings that petitioner engaged in such conduct (J.A. 9a, 11a; Pet. 18) are amply supported by the facts of record summarized in the Statement, *supra*, pp. 5–7.

[7] There is no substance to Local 1291's contention (Pet. 8–10) that NMU's contract with Pocahontas and Marine does not require the NMU seamen to open and close the ships' hatches. The plain language of the contract provisions set forth above, n. 2, amply supports the finding of the Board and court below (J.A. 8a; Pet. 17) that, among other duties, the NMU seamen are contractually responsible for hatch and beam work in consideration for receiving a monthly salary and, at times, premium pay. Moreover, the agreement provides that the NMU seamen "shall perform only the necessary and customary duties of their rating as directed by their officers" (J.A. 193a), and it is undisputed that, without filing any grievances, they regularly performed the hatch and beam work (J.A. 74a, 103a). Local

of the ILA began exerting strike pressure to obtain the hatch and beam work in the Philadelphia ports, NMU notified the Board that it was not claiming that work. However, NMU never advised the shipowners of this disclaimer or that it was willing to adjust the compensation of the seamen accordingly. And, notwithstanding the disclaimer, the NMU seamen continued to operate the ships' hatches and receive their full contract pay, while additional members of Local 1291 were hired to perform the same work. In these circumstances, the Board was fully warranted in concluding (J.A. 24a) that NMU's asserted disclaimer did not eliminate "the fundamental jurisdictional dispute between seamen and longshoremen as to who shall open and close ship hatches." As the court below pointed out (Pet. 18), "a jurisdictional dispute between two groups of employees as to which is entitled to certain work is in essence a dispute as to which shall receive compensation for that work. * * * It follows that if workmen, who are entitled to a job under the terms of a labor contract, agree to forego the obligation of working but not the concomitant right to payment, they have not disclaimed

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1291's contention (Pet. 10–11) that the contract does not "require" the seamen to perform any duties, but merely requires them to be available for "contingencies" and "extraordinary events," renders meaningless the "necessary and customary duties" clause and implies that the seamen might obtain substantial compensation ($300 to $500 per month; J.A. 190a) without doing any work.

any significant right." Accord: *International Brotherhood of Carpenters and Joiners, Local 1849* v. *C. J. Montag & Sons, Inc.*, 335 F. 2d 216, 221 (C.A. 9).[8]

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[8] *Penello* v. *Local Union No. 59, Sheet Metal Workers*, 195 F. Supp. 458 (D. Del.), relied upon by petitioners (Pet. 7–8), is distinguishable on its facts. There, the employees to whom the employer assigned the work involved had not always performed it in the past, had no contractual claim to it, and had cooperated with the union seeking the work for other employees by refusing to cross the latter's picket lines. *Id.* at 460–463.

The other cases relied on by petitioner (Pet. 6–7) are also distinguishable. In *Local 1905, Carpet, Linoleum & Soft Tile Layers*, 143 N.L.R.B. 251, *Brotherhood of Teamsters (Hills Transportation Co.)*, 136 N.L.R.B. 1086, and *Sheet Metal Workers, Local 72*, 136 N.L.R.B. 1402, the employees to whom the particular work was assigned did not, as here, continue to perform and receive payment for the work, but instead ceased to perform it. And, in *Highway Truckdrivers & Helpers, Local 107 (Safeway Stores, Inc.)*, 134 N.L.R.B. 1320, the employer transferred work away from employees, who for ten years had performed it for him under a series of collective bargaining agreements, to other employees who had not even sought that work.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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